

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte KAZUYUKI NAKATA

Appeal No. 2005-2432
Application No. 09/890,028

NOTIFICATION OF NON-COMPLIANCE REGARDING ORAL HEARING

The file record reflects that the appellant filed an Appeal Brief on February 2, 2004. On page 1 of the Appeal Brief, appellant included a statement requesting an oral hearing in connection with the appeal. On June 21, 2004, appellant filed a Reply Brief which stated on page 2 that appellant would like to use an expert witness at the oral hearing.

Effective December 1, 1997, 37 CFR § 1.194(b) was amended to provide that a request for an oral hearing must be filed in a separate paper.¹

¹ 37 CFR § 1.194(b) provides in pertinent part:

If appellant desires an oral hearing, appellant must file, in a separate paper, a written request for such hearing accompanied by the fee set forth in § 1.17(d) within two months from the date of the examiner's answer.

Since the appellant's request for oral hearing was not filed in a separate paper as required by 37 CFR § 1.194(b), the appellants' request for an oral hearing cannot be granted.

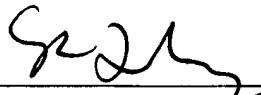
Furthermore, the fee for the oral hearing fee will not be refunded since the fee has not been charged.

If the appellant still desires an oral hearing, a petition under 37 CFR § 1.183 must be filed **within two weeks** of the facsimile transmission date of this notice. Such a petition must include (1) a request to suspend the separate paper requirement of 37 CFR § 1.194(b); (2) a showing of facts to establish that an extraordinary situation exists and that justice requires the separate paper requirement of 37 CFR § 1.194(b) be suspended or waived; and (3) be accompanied by the petition fee set forth in 37 CFR § 1.17(h) and the oral hearing fee as set forth in 37 CFR § 41.20(b)(3). This **two week time period** for filing a petition under 37 CFR § 1.183 is not extendable under 37 CFR § 1.136(a). The failure to timely file a petition under 37 CFR § 1.183 will result in the appeal being decided without an oral hearing (i.e., on brief).²

² If the appellants decide not to file a petition under 37 CFR § 1.183, the Board of Patent Appeals and Interferences would appreciate written notice thereof so that a decision on the appeal can be expedited.

By Order of the:

BOARD OF PATENT APPEALS
AND INTERFERENCES



Craig R. Feinberg
Program and Resource Administrator

FAXED DATE: August 24, 2005
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